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January 25, 2006

Clerk of Court
United States District Court
District of Massachusetts
John Joseph Moakley Federal Courthouse
One Courthouse Way Suite 2300
Boston, MA 02210

Re: DuPont, Petitioner v. Nolan, Office of the Attorney General, Respondent
Civil No. 04-11431-GAO

Dear Mr. Lyness:

At a recent status hearing the issue of mootness was presented to this Court. I would appreciate the opportunity to bring to the Court's attention a recent case, Luna v. Commonwealth of Massachusetts, 354 F3d. 108 (1st. Cir. 2004). The First Circuit in Luna, held:

"Although Luna's probation has expired, the habeas action was filed before this occurred. See 28 U.S.C. §§ 2241(c), 2254(b) (2000) (only people "in custody" may file a federal habeas petition); Spencer v. Kemna, 523 U.S. 1, 7 (1998) (statutory requirement is satisfied so long as the petitioner is in custody at the time the petition is filed); Jackson v. Coalter, 337 F.3d 74, 78-79 (1st. Cir. 2003) (probation counts as "custody" for purposes of federal habeas). Mootness is avoided because a presumption exists that a habeas petitioner continues to suffer the ill effects of a wrongful conviction even after his sentence is served. See Spencer, 523 U.S. at 7-14."

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Thank you.

Sincerely,

/s/ Lois Lewis
Lois Lewis

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/s/ Lois Lewis

